

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KAY STRATEGIES, INC., et al.,

Plaintiffs,

V.

UBIQUITY, INC., et al.,

Defendants.

Case No.: 15-cv-02720-H (DHB)

**ORDER GRANTING JOINT
MOTION TO CONTINUE DATES IN
THE SCHEDULING ORDER OF
NOVEMBER 21, 2016**

(ECF No. 54)

After conferring with the chambers of Judge Huff, the Court GRANTS the parties request to continue the discovery cutoff and all remaining dates ninety (90) days. Accordingly, the remaining scheduling order dates are modified as follows:

1. All discovery shall be completed by all parties by **December 8, 2017**.

“Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cut-off date, so that it may be completed by the cut-off date, taking into account the times for service, notice and response as set forth in the Federal Rules of Civil Procedure. **Counsel shall promptly and in good faith meet and confer with regard to all discovery disputes in compliance with Local Rule 26.1(a).** The Court

1 expects counsel to make every effort to resolve all disputes without court intervention
2 through the meet and confer process. If the parties reach an impasse on any discovery
3 issue, counsel shall file an appropriate joint motion within the time limit and according to
4 the procedures outlined in Magistrate Judge David H. Bartick's Civil Chambers Rules,
5 which are posted on the Court's website. **A failure to comply in this regard will result**
6 **in a waiver of a party's discovery issue. Absent an order of the court, no stipulation**
7 **continuing or altering this requirement will be recognized by the court.**

8 2. Please be advised that failure to comply with any discovery order of the Court
9 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
10 the introduction of experts or other designated matters in evidence.

11 3. All pretrial motions must be filed so as to be heard by **January 12, 2018**.
12 Counsel for the moving party must obtain a motion hearing date from the law clerk of the
13 judge who will hear the motion. The period of time between the date you request a motion
14 date and the hearing date may vary from one district judge to another. Please plan
15 accordingly. Failure to make a timely request for a motion date may result in the motion
16 not being heard. Motions in limine are to be filed as directed in the Local Rules, or as
17 otherwise set by the district judge.

18 4. A Mandatory Settlement Conference shall be conducted on **March 19, 2018**
19 at **10:00 a.m.** in the chambers of Magistrate Judge David H. Bartick. Counsel shall submit
20 settlement statements **directly** to Judge Bartick's chambers by **March 12, 2018**.¹ The
21 parties may either submit confidential settlement statements or may exchange their
22 settlement statements. Each party's settlement statement shall set forth the party's
23 statement of the case, identify controlling legal issues, concisely set out issues of liability
24 and damages, and shall set forth the party's settlement position, including the last offer or

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27 ¹ Statements under 20 pages in length, including attachments and exhibits, shall be e-mailed to chambers
28 at efile_Bartick@casd.uscourts.gov. Statements exceeding 20 pages in length, including attachments and
exhibits, must be delivered directly to chambers.

1 demand made by that party, and a separate statement of the offer or demand the party is
2 prepared to make at the settlement conference. **The settlement conference briefs shall**
3 **not be filed with the Clerk of the Court.**

4 **All named parties, all counsel, and any other person(s) whose authority is**
5 **required to negotiate and enter into settlement shall appear in person at the**
6 **conference.** The individual(s) present at the Mandatory Settlement Conference with
7 settlement authority must have the unfettered discretion and authority on behalf of the party
8 to: 1) fully explore all settlement options and to agree during the Mandatory Settlement
9 Conference to any settlement terms acceptable to the party (*G. Heileman Brewing Co., Inc.*
10 *v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989)), 2) change the settlement position
11 of a party during the course of the Mandatory Settlement Conference (*Pitman v. Brinker*
12 *Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003)), and 3) negotiate a settlement without
13 being restricted by any predetermined level of authority (*Nick v. Morgan's Foods, Inc.*,
14 270 F.3d 590, 596 (8th Cir. 2001)).

15 Governmental entities may appear through litigation counsel only. As to all other
16 parties, appearance by litigation counsel only is not acceptable. Retained outside corporate
17 counsel shall not appear on behalf of a corporation as the party who has the authority to
18 negotiate and enter into a settlement. **The failure of any counsel, party or authorized**
19 **person to appear at the Mandatory Settlement Conference as required shall be cause**
20 **for the immediate imposition of sanctions.** All conference discussions will be informal,
21 off the record, privileged, and confidential.

22 5. Counsel shall file their Memoranda of Contentions of Fact and Law and take
23 any other action required by Local Rule 16.1(f)(2) by **April 23, 2018.**

24 6. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
25 Civ. P. 26(a)(3) by **April 23, 2018.** Failure to comply with these disclosure requirements
26 could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

27 7. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
28 **April 30, 2018.** At this meeting, counsel shall discuss and attempt to enter into stipulations

1 and agreements resulting in simplification of the triable issues. Counsel shall exchange
2 copies and/or display all exhibits other than those to be used for impeachment. The exhibits
3 shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall note any
4 objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ. P.
5 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference
6 order.

7 8. Counsel for Plaintiff will be responsible for preparing the pretrial order and
8 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By May 7, 2018,
9 Plaintiff's counsel must provide opposing counsel with the proposed pretrial order for
10 review and approval. Opposing counsel must communicate promptly with Plaintiff's
11 attorney concerning any objections to form or content of the pretrial order, and both parties
12 shall attempt promptly to resolve their differences, if any, concerning the order.

13 9. The Proposed Final Pretrial Conference Order, including objections to any
14 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
15 lodged with the assigned district judge by May 14, 2018, and shall be in the form prescribed
16 in and comply with Local Rule 16.1(f)(6).

17 10. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
18 **Marilyn L. Huff** on May 21, 2018 at 10:30 a.m.

19 11. The parties must review the chambers' rules for the assigned district judge
20 and magistrate judge.

21 12. A post-trial settlement conference before a magistrate judge may be held
22 within 30 days of verdict in the case.

23 13. The dates and times set forth herein will not be modified except for good cause
24 shown.

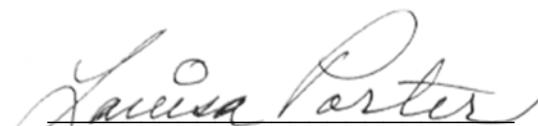
25 14. Briefs or memoranda in support of or in opposition to any pending motion
26 shall not exceed twenty-five (25) pages in length without leave of a district court judge.
27 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
28 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents

1 and a table of authorities cited.

2 15. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
3 case hereafter.

4 IT IS SO ORDERED.

5 Dated: September 28, 2017

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7 LOUISA S PORTER

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10 United States Magistrate Judge

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